June 2008

Office of Immigration Economic Stream of the Nova Scotia Nominee Program

Special Report of the
Auditor General
to the Nova Scotia
House of Assembly

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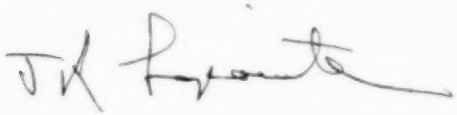
Honourable Alfie MacLeod
Speaker
House of Assembly
Province of Nova Scotia

Dear Sir:

I have the honour to submit herewith my Special Report to the House of Assembly on the Office of Immigration Economic Stream of the Nova Scotia Nominee Program, to be laid before the House in accordance with Section 15 of the Auditor General Act.

Respectfully submitted



JACQUES R. LAPOINTE, BA, CA • CIA

Auditor General

Halifax, Nova Scotia
June 5, 2008

Office of Immigration Economic Stream of the Nova Scotia Nominee Program

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Economic Stream of the Nova Scotia Nominee Program

Summary

The first phase of our audit of the economic stream of the Nova Scotia Nominee Program found significant deficiencies in the program. In its early stages, program objectives were poorly defined. Although certain objectives were eventually documented, these either were not met or could not be evaluated. We were unable to conclude whether nominees were attracted to and retained in Nova Scotia because the Office of Immigration has no practical mechanisms in place to track nominees once they enter Canada.

We concluded the objective to provide nominees with a mentorship position was not met. Only 210 of 532 economic nominees landed in Canada participated in mentorships. We reviewed a sample of business mentor application files and disagreed with the decision to approve 14 of 16 business mentors. We found support for approval of these businesses was inadequate.

We concluded the process to award the contract for the Nova Scotia Nominee Program to Cornwallis Financial Corporation was not in compliance with the spirit and intent of the procurement policy. While the Deputy Minister approved the alternative procurement, the decision to do so was based on incomplete information. We also noted the procurement ignored a Cabinet directive to tender the contract.

We concluded the contract between the Province and Cornwallis was inadequate. It did not adequately address key areas such as dispute resolution, termination clauses and trust account provisions. We also found contract administration and monitoring were inadequate over much of the contract term.

We found the Province was not in compliance with key provisions of the Canada Nova Scotia Agreement on Provincial Nominees, notably in three areas. No formal program evaluation was completed. Nominees were not adequately tracked after their arrival in Canada which means that Nova Scotia cannot assess whether the economic stream was successful in attracting and retaining immigrants in this Province. Additionally the requirement to provide adequate information and cooperation to auditors of the program was not met.

Throughout the audit, we encountered restrictions in obtaining the information required to complete our work. We were denied a significant number of documents based on claims they were either confidential Cabinet documents or subject to solicitor-client privilege. Further, certain program files were held back until they could be reviewed and purged of documents the Office of Immigration believed were confidential. Restricting the Auditor General's access to information constitutes poor public accountability. It is not in the public interest to do so and, further, it is in contravention of the right to information contained in the Auditor General Act.

Economic Stream of the Nova Scotia Nominee Program

History and Background of the Nova Scotia Nominee Program

OFFICE OF IMMIGRATION
ECONOMIC STREAM OF
THE NOVA SCOTIA
NOMINEE PROGRAM

1. On October 31, 2007 the Public Accounts Committee approved a resolution requesting that the Auditor General audit the Nova Scotia Nominee Program (NSNP). The Auditor General's Office was, at that time, conducting preliminary planning for an audit of the Office of Immigration. After receiving the Committee's request, the Auditor General agreed to undertake an audit of the Nova Scotia Nominee Program. Subsequently, the Auditor General decided to focus the audit on the economic stream of the NSNP.

2. *History of provincial nominee programs in Canada* – Provincial nominee programs were first introduced by the Federal government in the mid 1990's. The programs give provinces an opportunity to target potential immigrants. Provinces wishing to operate a nominee program set the criteria for their program, assess applicants' eligibility and sign an agreement with Citizenship and Immigration Canada. We were informed by the Office of Immigration that immigration through a nominee program is often faster than through Federal channels.

3. Under provincial nominee programs, the Federal government determines whether a provincial nominee is admissible to Canada by reviewing the health, security and criminal background of the nominee. The Federal government is also responsible for identifying any misrepresentations or fraudulent documents within the nominee's application, although the provincial government reviews the application for eligibility.

4. *Program history* – The Canada Nova Scotia Agreement on Provincial Nominees was signed on August 27, 2002. It outlined the responsibilities of Nova Scotia and Canada in operating the Nova Scotia Nominee Program. At that time, the Office of Economic Development was responsible for business immigration in Nova Scotia.

5. On December 9, 2002, the Province signed an agreement with Cornwallis Financial Corporation (Cornwallis), a private company, to assist with the design of all aspects of the Nova Scotia Nominee Program. Cornwallis was responsible for recruitment of potential nominees and mentors and assistance with file preparation. The Office of Economic Development provided final approval before a nominee was recommended to Citizenship and Immigration Canada.

6. In May 2005, the Office of Immigration (OOI) was created to administer immigration in Nova Scotia. OOI took responsibility for oversight of the NSNP, including the economic stream. On June 30, 2006, the contractual relationship between the Province and Cornwallis came to an end and OOI took over all aspects of the NSNP. This included management of the trust account which at the time this Report was written totaled approximately $69 million.

7. There were originally three main streams in the nominee program: skilled workers, community identified and economic. Two new streams for family business workers and international graduates were added in December 2006 and April 2007 respectively.

8. The economic stream was suspended in July 2006, although existing applicants continue in the program. In February 2008, the Office of Immigration announced the economic stream was being replaced by an entrepreneurial stream. When this Report was written, the entrepreneurial stream had not yet started accepting applications. The Nova Scotia Nominee Program continues to operate the remaining four streams. This audit focused on the economic stream.

Economic Category Background

9. The Office of Economic Development (OED) was initially responsible for business immigration in Nova Scotia until the creation of the Office of Immigration in 2005.

10. As of December 31, 2007, 733 Nova Scotia nominees had landed in Canada. 532 were participants in the economic stream of the Nova Scotia Nominee Program.

11. Under Cornwallis' contract with the Province, Cornwallis was responsible for recruitment of potential nominees and mentors and assistance with file preparation. Following a review of the file and interview with the applicant, OED, and later OOI, provided final approval before a nominee was recommended to Citizenship and Immigration Canada.

12. The fees associated with the economic stream were established through discussions between Cornwallis and the Province. The original fees were $130,500, allocated as follows:

    - $500 to the Province (this portion of the fee was eliminated as of May 9, 2006);
    - $100,000 to the business mentor company, of which at least $20,000 was to be paid in salary to the nominee;

- $20,000 to the international immigration consultant (early in the program only $18,000 was paid to the consultant); and
- $10,000 to Cornwallis for their role as file preparer.

13. Under the economic stream, the immigrant paid a non-refundable deposit of $1,700 ($1,200 to Cornwallis and $500 to the Province; the Province eliminated their portion starting in May 2006) and made their application directly to Nova Scotia, through Cornwallis. Although not a requirement of the program, most applicants made use of international immigration consultants to facilitate their application to the economic stream of the NSNP. Immigration consultants work with potential immigrants to assist them in preparing the necessary documentation for immigration to Canada.

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14. Prior to July 2006, Cornwallis was responsible for ensuring the nominee's application was complete and for the initial assessment of whether the nominee qualified for the economic stream. Once Cornwallis was satisfied with the application, an interview was arranged with OED, or later, OOI. This provided an opportunity for provincial staff to discuss why the nominee was interested in Nova Scotia, address any outstanding questions and make a final assessment of the applicant's ability to speak and understand English.

15. If provincial staff were satisfied with the nominee's application and interview, the nominee was required to submit the remaining $128,800 to Cornwallis. Once the fees were received, a nomination certificate was issued. The nomination certificate represented a request for Citizenship and Immigration Canada to approve the immigrant for entrance into Canada. At this point, the nominee had 90 days to submit the completed application to the appropriate visa post. Citizenship and Immigration Canada had final approval for all applications.

16. The local Canadian visa post conducted an assessment of the applicant to ensure there were no security, health or criminal issues. If issued a permanent resident visa by Citizenship and Immigration Canada, the nominee had one year from the date on his or her medical evaluation to enter Canada.

17. Once the nominees landed in Nova Scotia they were required to participate in a six month mentorship with a Nova Scotia business. After August 15, 2006, nominees had one year from landing to sign a contract with a business mentor. After this point, the nominee forfeited $100,000 of his or her application fee.

18. According to the contract, Cornwallis was to *"secure the participation of sufficient qualifying Nova Scotia businesses"*, while a committee, which

included provincial government representatives, had final approval for all business applications. Nominees were to select a mentor company from the list of approved businesses. The mentor company received $100,000 in two installments, $50,000 when the contract was signed and the remaining $50,000 at the conclusion of the mentorship. The nominee received a salary of at least $20,000 during the mentorship period.

19. The Office of Immigration stopped accepting applications to the economic stream on July 1, 2006. Existing applicants had until September 30, 2006 to provide all documentation to complete their application.

20. On October 12, 2007 the Office of Immigration announced the residency refund as an option instead of mentorship. A landed nominee who had not accepted a mentorship position, had landed in the previous 18 months and had lived in Nova Scotia for the previous 12 months could apply for a refund of his or her $100,000 or choose to participate in a mentorship.

Audit Objectives and Scope

21. The results of our audit of the economic stream of the Nova Scotia Nominee Program will be reported in two phases. This Report includes our observations and conclusions from Phase One. We expect to report the results of Phase Two later in 2008.

22. Throughout this Report, we often use the phrase *"trust account"*. The contract between the Province and Cornwallis uses this term and we have continued its use for consistency. In doing so, we are referring to the account set up by Cornwallis Financial Corporation in which nominees' funds were deposited, payments made, and interest accrued. We have used the term *"trust fund"* to refer to the account set up by the Province.

23. Phase One of our audit of the economic stream of the Nova Scotia Nominee Program examined the program objectives of the nominee program, the contract with Cornwallis Financial Corporation to operate the program and related procurement issues, compliance with the Canada Nova Scotia Agreement on Provincial Nominees and assessed a sample of mentor applications. Our objectives for this phase were:

- to assess whether the economic stream of the Nova Scotia Nominee Program met its objectives and outcomes;
- to examine the contract award for the Nova Scotia Nominee Program to a private company to determine if the Province of Nova Scotia Procurement Policy, in effect at the time, was followed;

- to examine the adequacy of the Province's contract with Cornwallis Financial Corporation and assess the adequacy of contract administration and monitoring;
- to assess the Office of Immigration's controls over trust fund receipts and disbursements;
- to assess whether the Nova Scotia Nominee Program complied with the requirements of the Canada Nova Scotia Agreement on Provincial Nominees; and
- to assess whether documentation in the mentor application files was sufficient to support the decisions made by the business review committee.

24. Phase Two of our audit will examine nominee, mentor and agent experiences with the economic stream, review trust account withdrawals and assess whether residency refunds were completed in compliance with established policies.

25. We encountered a scope limitation when completing our work on the adequacy of the Province's contract with Cornwallis. We requested details of contract changes suggested by Department of Justice legal counsel. We were refused this information.

Significant Audit Observations

Restrictions in Auditor General's Access to Information

26. *Conclusions and summary of observations* – During the audit of the economic stream of the Nova Scotia Nominee Program, we encountered significant restrictions in obtaining the information we required to complete our audit work. We were denied a large number of documents based on claims they were either confidential Cabinet documents or subject to solicitor-client privilege. These restrictions resulted in a scope limitation in the conduct of our audit, in which we noted we were unable to determine whether additional changes to the Province's contract with Cornwallis Financial Corporation were recommended by legal counsel but not implemented by the Office of Economic Development. We encountered further restrictions when the Office of Immigration refused to give us certain nominee and mentor files until they had been reviewed and purged of documents OOI believed to be confidential. Such restrictions reflect poor public accountability and are contrary to the Auditor General Act.

27. Auditors rely to a significant extent on the examination of relevant documented information to draw conclusions related to the audited subject. Throughout the course of this audit as well, our Office attempted, with varying degrees of success, to examine relevant documentation.

28. Early in our audit, the Office of Immigration provided us with a list of more than one thousand documents which they considered to be privileged and restricted, as either Cabinet or solicitor-client documents. We are concerned with the significance of this number.

29. We made a number of specific requests for information including:

- On November 30 and December 5, 2007 we asked the Office of Immigration and the Department of Justice to provide our Office with full access to all program documents, including sections of documents which were removed before providing them to the Public Accounts Committee.
- On January 23, 2008, the Auditor General requested that Treasury and Policy Board provide documents attached to certain Executive Council minute letters.
- On January 23, 2008, the Auditor General asked the Deputy Minister of Immigration to provide unrestricted access to information previously requested.

30. A reply received from Executive Council Office on February 6, 2008, on behalf of Treasury and Policy Board and the Office of Immigration, denied our requests for information.

31. On April 15, 2008, we asked Department of Justice legal counsel to provide certain communications between the Department of Justice, Cornwallis Financial Corporation and the Office of Economic Development related to the Province's contract with Cornwallis. We had previously requested this information from Office of Economic Development staff and were informed that all communications around the contract were now in Department of Justice files. While Justice provided some information, many documents were denied. We were informed that these documents were solicitor-client privileged.

32. One of our audit objectives was to assess the adequacy of the contract with Cornwallis Financial Corporation with respect to the Nova Scotia Nominee Program. Although we were able to examine the contract itself and draw certain conclusions as to its adequacy, we were unable to conclude whether the Office of Economic Development implemented all recommendations from legal counsel. We were missing key information and were unable to obtain satisfactory audit evidence through other sources. As a result, we

were forced to report a scope limitation – a situation in which an auditor has insufficient information to conclude. In light of our overall conclusion that the contract was inadequate, determining whether all recommendations for improvements to the contract were implemented is significant. Without this information, it is questionable whether the Office of Economic Development can truly be held accountable for their actions in this regard.

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33. As part of our audit work we asked to see a number of business mentor and nominee files. On some occasions files were withheld from us until they could be reviewed and purged of information the Office of Immigration believed was confidential. While, on request, we were provided with a list of documents removed from the files, we cannot be certain this list was complete and we do not know whether the documents that were removed would have had an impact on our audit. This practice is unprecedented and constitutes an unwarranted interference with the audit process.

34. One area in which our access to information was restricted relates to documents submitted to Executive Council. Most Cabinet-related documents requested were denied to us. Although we were provided portions of some Cabinet-related documents, many sections were deleted, including background, analysis and recommendations. This information was refused to us on the basis of a claim of Cabinet privilege or Cabinet confidentiality. Executive Council Office and Treasury and Policy Board have stated that, not only do we not have the right to receive confidential Cabinet documents, but they do not believe we require this information to complete our work. This decision is not theirs to make. The decision as to what information is required to complete an audit is made by the Auditor General. Submissions to Cabinet often contain information which can be significant to an audit. Such documents may contain key information, such as analysis of options, allowing auditors to fully assess how a government department or entity has completed its due diligence in examining alternate courses of action. The Auditor General Act requires that all documents, whether confidential or not, be provided and does not contain any exemption for Cabinet submissions.

35. The Auditor General's access to information was also restricted with regard to solicitor-client privileged documents. We were not provided any communications between government departments and Department of Justice lawyers. The Office of Immigration, on the advice of Department of Justice lawyers, claimed we do not have the right to these documents. Executive Council Office and the Department of Justice have informed us they believe the Auditor General's right to information does not extend to solicitor-client documents. Further, Department of Justice staff have informed us they believe information provided to the Auditor General loses its privileged status. Although we acknowledge that legal counsel cannot disclose advice given to a client, the client is certainly free to provide this

information and the Auditor General has the authority to require the client to produce the information.

36. Section 10(1) of the Auditor General Act states: *"Notwithstanding the provisions of any other Act, every officer, clerk or employee of an agency of government shall provide the Auditor General with such information and explanation as the Auditor General requires and the Auditor General shall have free access, at all times, to the files, records, books of account and other documents, in whatever form, relating to the accounts of any agency of government."* Section 14 states *"The Auditor General shall have, in the performance of his duties, the same powers, privileges and immunities as a Commissioner appointed under the Public Inquiries Act."*

37. The Auditor General has a right to examine any information he requires in order to complete his work and public servants are required to provide it. Throughout the course of this audit, the Offices of Immigration and Economic Development and Treasury and Policy Board, on the advice of the Department of Justice and Executive Council Office, have consistently refused to provide our Office with all the information we have requested.

38. Furthermore, as discussed in paragraph 112 of this Report, the Canada Nova Scotia Agreement on Provincial Nominees requires the Province to provide this Office with *"adequate information and cooperation"*. Government has not complied with the Agreement.

39. At the end of an audit, the auditor should be confident he or she has reviewed all relevant documentation in forming audit opinions. This is not possible when a large number of documents are denied to the auditors. We do not know what impact, if any, this information would have had on our audit had it been provided.

40. We are concerned that these information issues could not be resolved during the months our Office worked on the audit of the economic stream of the Nova Scotia Nominee Program. We believe it is within each entity's authority to provide this information and the failure to do so constitutes undue interference with the Auditor General's mandate and his responsibility to report to the House of Assembly.

Economic Stream Program Objectives

41. *Conclusions and summary of observations* – Our audit objective was to assess whether the economic stream of the Nova Scotia Nominee Program met its objectives and outcomes. We concluded that although some high-level objectives were included in the Canada Nova Scotia Agreement on Provincial Nominees, detailed objectives for the economic stream were poorly defined. Through interviews with immigration staff and a policy

manual approved 15 months after the Province signed the contract with Cornwallis, we were able to identify the following objectives: attract and retain more immigrants to Nova Scotia and provide a six month business mentorship opportunity. We were unable to conclude whether nominees were attracted to and retained in Nova Scotia as the Office of Immigration has no practical mechanisms in place to track nominees once they enter Canada. A significant number of nominees did not participate in the mentorship component of the program and a refund option has been created to allow some of those individuals to receive a refund of $100,000 of their application fee. We also noted the Office of Immigration had concerns with the majority of business mentor matches. Although we will complete further audit work related to mentorship arrangements in Phase Two, it is clear the objective related to mentorship was not met.

Poorly Defined Objectives

42. No formally documented, detailed objectives were established and communicated at the outset of the economic stream. The Canada Nova Scotia Agreement on Provincial Nominees included the following high-level objectives:

- *"...to increase economic benefits of immigration to Nova Scotia ..."*
- *"to process and admit the candidates for Provincial Nominees, nominated by Nova Scotia for permanent residence as expeditiously as possible..."*

43. Office of Economic Development staff involved at the program's inception and Office of Immigration staff currently responsible for the NSNP informed us there were two key objectives of the economic stream:

- Attract and retain more immigrants to Nova Scotia.
- Provide a six month mentorship to give immigrants exposure to and experience with Nova Scotia businesses.

44. Additionally, a policy manual approved March 2004, 15 months after the Province signed the contract with Cornwallis to assist in designing the NSNP noted the following goal: *"... to locate and encourage immigrants who will settle and work in Nova Scotia."*

45. Through discussions with Office of Economic Development staff and review of the Province's contract with Cornwallis, we understand Cornwallis' role included assisting with the design of the Nova Scotia Nominee Program. However we believe there should have been more detailed written objectives stating what the NSNP was to achieve as part of the initial documentation in a government program.

46. With poorly defined objectives, program requirements are not clear and it is not possible to evaluate whether a program succeeded. Well defined objectives also facilitate the procurement process when a private contractor is hired to design and operate components of a provincial program. Well documented objectives help eliminate confusion over what is expected of the contractor and help ensure goals for the program are met.

Assessment of Informal Objectives

47. As the Office of Immigration has not completed a formal evaluation of the program to date, we assessed whether the economic category met its objectives. The Office of Immigration did review some aspects of the program, including fees charged to nominees and analysis related to establishing the residency refund option.

48. *Nominee attraction and retention rates* – According to OOI statistics, a total of 1,248 nomination certificates, recommending potential immigrants for entrance into Canada under all categories of the Nova Scotia Nominee Program, were submitted to the Federal government by December 31, 2007. Citizenship and Immigration Canada statistics provided to OOI state that 733 Nova Scotia nominees landed in Canada as of December 31, 2007 with 532 being in the economic stream. We have not audited the accuracy of the above statistics.

49. The Office of Immigration could not provide information on the number of nominees who arrived in Nova Scotia nor the number retained over a longer period of time. OOI management informed us that while Citizenship and Immigration Canada (CIC) provides information on the number of Nova Scotia nominees landed in Canada and their intended place of residence, CIC does not have access to information on the number of nominees who actually came to, and continued to reside in, Nova Scotia.

50. Nominees signed a release of information form agreeing *"to provide the Province of Nova Scotia with my address...within 30 days of arriving in Canada and to inform the Province of Nova Scotia of any address changes for a period of two years after landing..."* OED and OOI management informed us they were unable to enforce this requirement. We noted the Canada Nova Scotia Agreement on Provincial Nominees required tracking nominees for at least five years from their entrance into Canada. Nova Scotia is not in compliance with this aspect of the Agreement. OOI management informed us many other provinces are not compliant with this provision of their Agreements given concerns with tracking individuals once they enter Canada.

51. One possible way to obtain information on attraction and retention levels could be to require that nominees provide OOI with ongoing information

for the full five years on their whereabouts, possibly through health care or driver's license data. There may also be other ways to obtain this information from nominees.

52. Without information on the number of immigrants nominated by Nova Scotia who have ultimately chosen to live in this Province over a longer time period, Nova Scotia has no means of ensuring its economic stream objectives are achieved. There is a risk that the economic stream may have functioned as an entryway to other parts of Canada for anyone with sufficient resources. In the future, it is not clear how the Province will assess the success of its nominee initiatives if it has no means to track immigrants to determine whether they settled in Nova Scotia.

53. The Federal and Provincial governments are the only reasonable sources of information on nominee whereabouts. Given the lack of available information, we were unable to conclude whether the economic stream attracted and retained more immigrants in Nova Scotia.

54. *Provision of six month mentorship* – The provision of a mentorship opportunity to nominees was a key component of the NSNP's economic stream.

55. During the time the economic stream operated, there were considerable difficulties attracting a sufficient number of mentor companies. Assessment criteria were poorly documented. Staff involved with the program indicated prospective mentor companies were assessed against criteria as follows:

- Private companies only, no publicly traded companies (removed as of September 1, 2006)
- No not-for-profit or government entities
- Minimum of five employees
- Offer a middle management position for at least six months
- Maximum of one nominee per business
- Minimum of one year between nominees for a business

Once OOI was responsible for the program, it further defined and clarified these criteria.

56. The criteria prohibited involvement of larger companies and the non-profit sector, where valuable mentorship opportunities may have existed. The criteria also limited the number of mentorships available in a single company. Establishing restrictive parameters around which companies were eligible to participate did not support the economic category's mentorship objective.

57. Office of Immigration management indicated that of the 532 Nova Scotia economic nominees landed in Canada by December 31, 2007, only 210 participated in mentorships with Nova Scotia businesses.

58. In October 2007, OOI created the residency refund option under the economic stream. In determining whether to proceed with the residency refund option, OOI concluded the following, as noted in advice to Cabinet on September 25, 2007:

- *"The majority of business matches are not bona fide..."*;
- *"The employment relationships which are legitimate are rarely at a middle management level as required"*;
- *"Many nominees are not staying in NS, those who stay indicate that the Program does not meet their needs"*;
- *"...the program has been inaccurately described and marketed..."*;
- *"The economic stream has primarily targeted entrepreneurs and business managers... who are interested in starting or investing in a business..."*

59. During Phase One of our audit of the economic stream, we tested 20 mentor application files to determine whether there was adequate support for the decision made by the business review committee. The files included 16 approvals and 4 rejections. We concluded 14 of 16 approvals tested had insufficient support for approval of the company to participate in the economic stream as a mentor. See the Business Mentor Application Testing section on page 26 below for further details of this testing.

60. Phase Two of our audit work will examine the mentorship aspect of the economic stream more closely. Although we have not completed all audit work related to mentorship arrangements between Nova Scotia businesses and nominees, it is clear from our work to date that the objective to provide a six month mentorship opportunity to nominees was not met.

Procurement

61. *Conclusions and summary of observations* – Our objective was to examine the contract award for the NSNP to a private company to determine if the Province of Nova Scotia Procurement Policy, in effect at the time, was followed. We concluded that the process to award the Nova Scotia Nominee Program contract to Cornwallis was not in compliance with the spirit and intent of the procurement policy. Although the Deputy Minister approved the alternative procurement form, the information provided to the Deputy Minister was incomplete. Finally, the alternative procurement ignored a cabinet directive that the program contract be awarded through the tendering process.

62. *Nova Scotia Nominee Program proposals* – After Nova Scotia began discussions with the Federal government regarding a provincial nominee program, the Office of Economic Development (OED) received two unsolicited proposals in 2000. Cornwallis Financial Corporation (Cornwallis) submitted a proposal in August 2000 and Canadian International Capital Inc. (Canadian) submitted a proposal in December 2000. Both parties were interested in participating in the NSNP once it was finalized and both maintained contact with OED staff while waiting for Nova Scotia to sign an agreement with the Federal government establishing a provincial nominee program.

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63. OED staff and management informed us they preferred Cornwallis' proposal. We noted the following examples.

- A December 7, 2000 memo from an OED staff member to the Deputy Minister noted the benefits of the Cornwallis proposal. The Canadian proposal submitted on December 5, 2000 to the same staff member was not mentioned.

- A November 26, 2001 memo from OED to the procurement branch provided information on the two unsolicited proposals for the NSNP and sought procurement's recommendation on how to proceed. The memo included a one paragraph summary of both proposals. Canadian's summary noted the proposal dealt with pooled funds which was not acceptable to OED. However the memo did not mention Canadian's repeated requests to OED to meet and discuss options. Additionally it indicated Canadian would charge a management fee to government for their services. However it was not clear from Canadian's proposal whether its management fees would be paid by the Province or the nominee applicant. Finally, the memo concludes "*...Cornwallis presently meets our needs best.*"

64. *Executive Council direction* – A February 9, 2001 Memorandum to Cabinet noted two unsolicited proposals were received and recommended approval of the Cornwallis proposal. On April 10, 2001, Executive Council issued a directive that OED proceed with acquiring a partner to run the NSNP via a public tender. That directive was sent to the Minister and Deputy Minister. Following a change in cabinet portfolios and a new deputy minister, the contract was awarded in December 2002 through an alternative procurement, rather than by tender.

65. *Compliance with procurement policy* – In 2002, the procurement policy permitted alternative procurement provided the Deputy Minister of the procuring department approved the alternative procurement practices report and the department consulted with the procurement branch. There was no requirement for the procurement branch to agree with the alternative procurement approach used.

66. OED consulted with the procurement branch in the months leading up to awarding the contract. Procurement recommended proceeding with a tender. OED responded that tendering the contract was not necessary and ultimately chose to use the alternate procurement method.

67. On October 2, 2002, the Deputy Minister approved the alternative procurement practices report to proceed with the contract with Cornwallis. Before the report was signed, the Deputy Minister was informed by a senior OED staff member that the former Deputy had agreed to the alternative procurement prior to his departure. At a January 2008 Public Accounts Committee meeting, this OED staff member stated he was not sure if it would be fair to say the former Deputy Minister had fully agreed with the alternative procurement approach. At the same meeting, the former Deputy informed the Committee he had not authorized the alternative procurement prior to his departure. Later, in interviews with our Office, the senior OED staff member said the former Deputy had not formally agreed but was supportive of the alternative procurement.

68. *Alternative procurement practices report* – The information contained in the alternative procurement practices report was incomplete. We noted the following examples.

- Canadian International Capital Inc.'s proposal noted fees were to be determined. The report included estimated fees based on a different immigration program operated by Canadian in another province.
- Cornwallis' proposal did not include a specific amount for fees. The alternative procurement report noted Cornwallis would charge $20,000 to the nominee.
- The report notes Cornwallis was dedicated to Nova Scotia. Although OED ultimately required this exclusivity when the contract with Cornwallis was signed, the proposal clearly stated Cornwallis would not be exclusive to Nova Scotia.
- The procurement policy included a list of possible exemptions under which alternative procurement could be approved. The form included a space to record the alternative procurement practice used. This was left blank.

69. Procurement branch staff requested that OED provide the appropriate exemption. In our discussions with OED, the individual who prepared the alternative procurement form was unable to recall whether this information was provided to procurement. Procurement informed our Office it had no record of receiving this information from OED.

70. We reviewed the possible alternative procurement exemptions in effect at the time and could not determine which exemption might have applied in this situation.

71. Office of Economic Development staff informed us there were ongoing negotiations between Cornwallis and the Province from August 2000 to October 2002 which led to changes in Cornwallis' proposal. Furthermore, OED staff informed us these changes were consistent with the information on the alternative procurement report. OED was unable to provide any written documentation to support these changes.

72. We acknowledge the authority of a Deputy Minister to authorize alternative procurement. However we believe the approval of the contract with Cornwallis was not in compliance with the spirit and intent of the procurement policy. Although the Deputy Minister technically approved the alternative procurement form, the decision was based on incomplete information. As a result, we concluded the process supporting the Deputy's decision was inadequate.

73. *Vendor complaint process* – In January 2003, Canadian became aware of the Province's contract with Cornwallis and contacted OED staff. Canadian submitted a formal complaint on February 5, 2003 regarding the procurement process followed, but held the complaint in abeyance during negotiations with OED management and Department of Justice lawyers. Correspondence from Justice repeatedly indicated a request for proposals (RFP) would be issued shortly and that Canadian would have an opportunity to submit a formal bid to operate the Nova Scotia Nominee Program. No RFP was ever issued, and Canadian reactivated their complaint on December 12, 2003.

74. As a result of the court proceeding on Canadian's complaint the province was required to conduct a formal review of the procurement process followed in awarding the contract to Cornwallis. On March 3, 2005, the provincial review committee released their report with the following findings:

a. "*The Review Committee is satisfied that the Alternative Procurement process was utilized in the purchasing of services for the Nova Scotia Nominee Program. The Procurement Branch was consulted and an Alternative Procurement Practices report was completed and signed by the CEO of OED, all in accordance with Section 8 of the Procurement Policy.*

b. *As stated in the Procurement Policy, the final decision of which approach to use is at the discretion of the Deputy Minister (CEO). In light of the above the Review Committee finds that the CEO had the right to make the final decision under the policy.*

c. *CICI raised its concerns of the Review Committee regarding the accuracy of the information that was before the CEO at the time that the Alternative Procurement was authorized. It is not for the Review Committee to question the discretionary decision of the CEO. The Review Committee is to satisfy*

itself that a decision was made by the appropriate Deputy Minister (CEO) in accordance with the Procurement Policy, which it has done."

Contract Adequacy

75. *Conclusions and summary of observations* – Our objectives were to assess the adequacy of the contract with Cornwallis and the adequacy of contract administration and monitoring by provincial staff. We concluded that the contract was inadequate. It did not adequately address significant areas such as dispute resolution mechanisms and termination clauses, trust account provisions and adequate audit access for the Province and the Office of the Auditor General. We also found contract administration and monitoring inadequate over much of the contract term with Cornwallis. There were no standard reporting requirements to allow regular monitoring by provincial staff. The trust account was under the sole signing authority of Cornwallis. We noted the Office of Immigration insisted on joint signing authority with Cornwallis once they took over administration of the NSNP, including the economic stream.

Inadequate Contract

76. *Contract history* – Cornwallis presented its proposal for the Nova Scotia Nominee Program to the Office of Economic Development on August 22, 2000; the final contract between the two parties was signed on December 9, 2002. The contractual relationship ended on June 30, 2006 and the parties are still involved in litigation over issues surrounding the contract.

77. In August 2003, Cornwallis and the Province added appendix B to the contract. Both parties initialed the appendix. Cornwallis informed us it did not acknowledge appendix B as part of the contract. Cornwallis claimed it signed appendix B provided the Province met certain conditions which Cornwallis believed were not met. The appendix did not impose any conditions the Province was required to meet before it came into force.

78. *No financial analysis* – There was no analysis of the possible financial impact of the economic stream of the Nova Scotia Nominee Program prior to awarding the contract to Cornwallis. The Canada Nova Scotia Agreement on Provincial Nominees allowed up to a total of 200 nominees per year over five years in all nominee program streams. If even half the nominees were in the economic stream, this could have resulted in up to 500 nominees, each paying $130,500 for a total of up to $65 million flowing through the trust account.

79. *Concerns regarding the NSNP contract* – Cornwallis' Nova Scotia Nominee Program (NSNP) proposal included a suggested contract. There were no substantive changes from that contract to the signed contract between the

Province and Cornwallis. Although there were minor changes to contract clauses, these changes did not address significant issues such as regular reporting by Cornwallis or adequate dispute resolution mechanisms.

80. We interviewed management and staff involved with immigration at the Office of Economic Development when the Nominee Program was created. OED staff noted no significant involvement in review and approval of the contract with Cornwallis. We were informed Department of Justice lawyers were responsible for review and approval of the contract.

81. We asked Justice legal counsel to describe their typical role in reviewing or approving contracts. We were informed that Justice reviews contracts and provides advice to the applicable department. It is the department's decision whether to implement this advice. Justice often negotiates contracts within parameters established by a department but does not approve contracts on behalf of government departments. Department of Justice staff informed our Office that although it may have suggested changes to the proposed contract with Cornwallis, it was never asked to negotiate with the company's legal counsel.

82. We interviewed the Justice lawyer responsible for providing advice to OED at the time of the contract. Justice refused to discuss possible changes it might have recommended to the contract based on its claim this information was solicitor-client privileged. This is an area in which our access to information was significantly restricted; ultimately we reported a scope limitation in this area of our audit. See paragraphs 25 and 32 for further discussion of the scope limitation.

83. We asked the OED staff member involved at the time the contract was signed to provide details of any changes suggested by legal counsel but not made by OED. We were informed the staff member did not recall specifics and that all information related to the Cornwallis contract now resides with the Department of Justice.

Areas Not Addressed in the Contract

84. A number of key considerations that were not addressed in the contract or its appendices are discussed below.

85. As noted in the scope section near the start of this Report, we continued the use of the phrase *"trust account"* for consistency with the contract. We are referring to the account set up by Cornwallis Financial Corporation in which nominees' funds were deposited, payments made, and interest accrued.

86. *Ownership of interest accruing in the trust account* – The contract was silent on the issue of interest on the trust account. Since the NSNP's inception, up to $5.4 million in interest accumulated in the trust account.

87. Given the structure of the Nominee Program, significant interest funds were likely to accumulate. By the end of year three, Cornwallis was to have identified at least 200 nominees from all NSNP streams. Each economic nominee paid $130,500 to participate in the program. These funds were paid prior to the issuance of a nomination certificate after which the nominees had 90 days to complete their application. Following Federal approval, nominees had one year from the date of their medical evaluation by Citizenship and Immigration Canada to land in Canada. Further, until August 2006, there were no time limits on nominees to find a mentorship position. Given these timelines, it was reasonable to assume at least part of the $130,500 could remain in the trust account for a significant period of time.

88. Cornwallis initially investigated establishing a formal trust arrangement with various banks. Two versions of draft escrow agreements were prepared by Cornwallis but they were unable to obtain agreement from OED to proceed. Both draft escrow agreements included clauses stating that all interest earned on the trust account would go to Cornwallis. Cornwallis opened a bank account which they referred to as a trust account in January 2003. This account functioned as the NSNP trust account. Cornwallis was the sole signing authority on the account until September 2, 2005 when the Office of Immigration insisted the Province have joint signing authority. Clause 2 of appendix B states that "*...funds shall be retained in a trust account not under the sole control, either directly or indirectly, of Cornwallis...*" The trust account operated from January 2003 to September 2005 under the sole control of Cornwallis.

89. *Ownership of any unclaimed monies in the trust account* – The contract did not address disposition of certain trust account amounts such as interest on trust monies or portions of fees which were not paid to an external party or were forfeited by nominees.

90. Of the $130,500 fee under the economic stream, $20,000 was intended for international immigration consultants. However in the early stages of the program, both the Province and Cornwallis agreed to pay the consultants $18,000. Later, the amount paid to consultants was increased to $20,000 as originally planned. The difference of $2,000 related to approximately 196 nominees remained in the trust account for a total of approximately $392,000. In its lawsuit against the Province, Cornwallis claimed it was entitled to those funds.

91. In certain instances, business mentor matches were terminated before the second payment was made, and $50,000 was forfeited. Further, nominees who landed in Canada but opted not to live in Nova Scotia, forfeited the $100,000 intended for the mentorship company. OOI did not know how many nominees chose to live outside of Nova Scotia. As a result, although information was available on certain forfeitures, it was not possible to determine total forfeited fees which remained in the trust account.

92. *Lack of termination clauses and dispute resolution mechanisms* – The original signed contract did not provide adequate mechanisms for dispute resolution or contract termination.

93. Neither the contract nor its appendices contained clauses which addressed how disputes between contract parties would be settled.

94. There were initially few mechanisms for early termination of the Province's contract with Cornwallis. Specifically, the contract stated *"Termination of this Agreement by the Province may only be made for wilfull misconduct, gross negligence, breach of contract, breach of trust, or any act of bankruptcy on the part of Cornwallis."* The contract renewal period was completely at Cornwallis' option. Appendix B allowed the Province to terminate the contract if the Federal government ended the nominee program but this was signed eight months after the contract date and is now in dispute.

95. *Lack of audit provision for the Office of the Auditor General* – The contract did not include a specific audit provision for this Office. In order to ensure adequate accountability to the House of Assembly, we believe all significant contracts entered into by the Province should include audit provisions for the Auditor General.

Inadequate Contract Administration and Monitoring

96. *Insufficient reporting requirements* – The contract required an annual financial audit. Cornwallis was not required to provide any regular reporting or reconciliations related to the trust account or the program in general, beyond the annual audit. We noted Cornwallis provided quarterly reports to OED; however these reports did not include any reconciliation of funds received or expended related to the trust account.

97. *Lack of signing authority for the Province* – Cornwallis opened a trust account for the NSNP in January 2003. Cornwallis had sole signing authority over this account until September 2, 2005; four months after OOI took over the NSNP from OED.

98. *Lack of adequate monitoring of contractor* – During the time OED was responsible for oversight of the contract, Cornwallis removed interest funds

totaling approximately $190,000 from the trust account. Although the funds were eventually returned to the account, there was no evidence that OED monitoring identified the missing interest and no evidence of follow-up by OED to address this issue. OED staff informed us they relied on the annual financial statement audit to monitor Cornwallis. We believe more regular monitoring of the contractor was necessary.

99. The audited statements for the period ended December 31, 2004 were provided to OOI in June 2005, after OED was no longer involved. Upon identifying the issue of interest funds removed from the trust account, OOI contacted Cornwallis and indicated it was required to return the money immediately.

100. Cornwallis continued to claim ownership of all interest accrued on the NSNP trust account and these amounts form part of the ongoing litigation between Cornwallis and the Province.

101. In our review of work completed by the Department of Finance's Internal Audit and Risk Management Centre (IARMC), we noted IARMC identified two instances in which a nominee arrived without the help of an international immigration consultant (see paragraph 134 for results of the review). In both cases, Cornwallis transferred the full $28,000 to their corporate account as was the typical practice - $10,000 for Cornwallis as the file preparer and $18,000 for the international immigration consultant. Cornwallis asked OED for direction on both situations in their June 2004 quarterly report to the Office of Economic Development. OED staff informed us they responded verbally, instructed Cornwallis to leave the money in the trust account and indicated a decision on usage of the funds would be made at a later date. There was no evidence of a written response. Cornwallis returned the $36,000 to the trust account in May 2006 and this amount forms part of the ongoing litigation.

102. When the Office of Immigration was created, it took a more proactive approach in dealing with the NSNP and Cornwallis. OOI insisted on joint signing authority over the trust account, and initiated the review by the Internal Audit and Risk Management Centre. OOI made continual efforts to improve the controls over the program and the trust account.

Controls Over Trust Fund at Office of Immigration

103. *Conclusions and summary of observations* – Our objective was to assess the Office of Immigration's controls over trust fund receipts and disbursements after the Province took over operation of the NSNP trust account. We concluded that, in general, internal controls were adequately designed and functioning as intended. We suggested improvements to address minor issues identified.

104. We examined the internal controls over the trust fund since the Province took over from Cornwallis in July 2006 and found that controls over receipts and disbursements were adequately designed and functioning as intended. We identified two minor issues with the design of controls. Mail is opened by one individual and cheques received are not reconciled to cheques deposited by an independent party. As well, a more senior staff member should review monthly bank reconciliations. All other controls were appropriately designed and working properly for all items which we tested.

105. Additional audit work on trust transactions is being conducted and will be reported in Phase Two.

Compliance with Canada Nova Scotia Agreement

106. *Conclusions and summary of observations* – Our objective was to assess whether the Nominee Program followed the requirements in the Canada Nova Scotia Agreement on Provincial Nominees. Of 14 requirements Nova Scotia had to comply with under the terms of the Agreement, we concluded six requirements were met, four were not met and we were unable to conclude on three requirements. We will address the remaining requirement during Phase Two of our audit.

107. While we audited only the economic stream, the Agreement covers the entire Nova Scotia Nominee Program. As noted earlier, although the economic stream of the NSNP has been discontinued, four streams – skilled worker, community identified, international graduates and family business workers – continue to operate.

108. Of the four requirements which were not met, we believe three are particularly significant to the Nominee Program and our audit. Lack of evaluation of a program poses the risk that government resources will be expended on unsuccessful programs. Lack of adequate tracking of nominees after their arrival in Canada means Nova Scotia cannot assess whether the economic stream of the Nominee Program was successful in attracting and retaining immigrants in this Province. Finally, the requirement related to audit access was not fully met as we encountered restrictions in the information provided to us to complete our audit. This is discussed in greater detail in the Restrictions in Auditor General's Access to Information section on page 8 of this Report.

109. *Key requirements* – Section 7.1 of the Agreement requires completion of an evaluation prior to the end of the current Agreement. OOI did review some aspects of the program, including fees charged to nominees and analysis related to establishing the residency refund option. No formal evaluation was completed as of May 2008 but a permanent Agreement with the Federal

government has been signed allowing Nova Scotia to continue to operate a Provincial Nominee Program. Although the Federal government has agreed to defer the evaluation, we feel this is a significant issue and should be addressed. Failure to assess a program means mistakes made may be repeated in the future. Additionally, government has no information on the success or failure of a program which continues to expend government resources. There is a risk these resources could be better utilized elsewhere. In the case of the NSNP and government's initial reliance on a private company with little regular monitoring by the Province, there are lessons learned which could provide direction to all government departments, but without an evaluation it is not possible to identify what went wrong and ensure mistakes are not repeated.

110. Section 7.2 of the Agreement states *"Subject to applicable legislation and policies governing the disclosure of personal information, Canada and Nova Scotia agree to share information on prospective and actual immigrants so as to maximize the effect of recruitment and retention efforts. This will include tracking of provincial nominees to Nova Scotia for a minimum of five years from their date of entry, as a basis for assessing the effectiveness of targeted recruitment and integration and retention activities."* We interpret this to mean Nova Scotia is required to track nominees for five years to determine where they have settled. OED and OOI informed us they do not agree with our interpretation and they believe tracking is not a requirement.

111. As noted in paragraph 50 earlier, neither the Office of Economic Development nor the Office of Immigration requested permission to track nominees once they entered Canada. Although nominees agreed to provide information on their whereabouts for two years after landing, OED and OOI informed us they were unable to enforce this. We examined the Agreement and concluded Nova Scotia is not in compliance with Section 7.2. Without tracking information, Nova Scotia has no means of knowing whether individuals nominated by the Province through the economic stream of the NSNP are moving to or staying in Nova Scotia.

112. Section 8.3 requires that adequate information and cooperation be provided to audit and evaluation agencies of Canada and Nova Scotia. As outlined earlier in this Report (see Restrictions in Auditor General's Access to Information on page 8), our Office has not been given adequate information during this audit. The Province is not in compliance with this requirement of the Canada Nova Scotia Agreement on Provincial Nominees. Further, while appendix B has some references to the Province's right of due diligence, the contract with Cornwallis provided only for an external audit of the trust account and did not include adequate audit provisions for provincial internal audit staff or our Office.

113. The remaining requirement which was not met was the formation of a joint working group with the Federal government.

114. The requirements which were met covered less significant areas, including communication with the Federal government and nominating no more than the maximum number of nominees permitted.

115. We were unable to conclude on the following three requirements.

116. Section 5 of the Canada Nova Scotia Agreement on Provincial Nominees requires that Nova Scotia not issue a nomination certificate if the immigrant's employment will impact a labour dispute or where the labour market needs can be met from within Nova Scotia. We were not able to conclude whether this requirement was met. OOI management informed us they feel this provision applies only to the skilled worker stream, not the economic stream.

117. Section 8.6 of the Agreement with Canada requires that Nova Scotia not nominate an applicant who has entered or intends to enter an immigration investment scheme. Although Nova Scotia has taken steps to address possible investment schemes between nominees and their mentor companies, no information is collected on whether the immigrant is involved in an investment scheme at the time of their application.

118. There is also a requirement that Nova Scotia comply with applicable federal and provincial privacy requirements. Although OOI provided examples of how it ensures privacy of nominees' information, it has not completed a detailed analysis of all aspects of the relevant privacy requirements. As a result, we could not conclude whether this condition was met.

Business Mentor Application Testing

119. *Conclusions and summary of observations* – Our objective was to assess whether the documentation in the mentor application files was sufficient to support the decisions made by the business review committee. We found 14 of 20 files tested did not have sufficient documentation to support the decisions made. In all 14 cases, the information provided by the applicants did not support their approval to participate as business mentors in the economic stream. We were informed the economic stream did not attract the quality or number of mentor companies the Office of Economic Development, and later the Office of Immigration, hoped it would. We are concerned that most of the mentor companies we reviewed were not qualified to be mentors according to the criteria.

120. *Detail testing results* – We tested 20 business mentor application files which included 16 approvals and 4 rejections. Our testing included applications reviewed when the Office of Economic Development was responsible for the

economic stream as well as those reviewed since the Office of Immigration assumed responsibility. Of the 16 approved files, we found support for the decision to approve these companies was inadequate in 14 of those instances. The remaining four files were rejected by the review committee, and although we agreed with the decision on all four files, one applicant appeared closer to meeting the qualifications than many of the approved files tested.

121. *Business review committee* – During the time OED was responsible for the economic stream, the business review committee primarily consisted of one member from Cornwallis and two from government. Both government members worked for the Province in the economic development area and were asked to help with the business review committee. They informed us this work was in addition to their regular employment duties and noted they did not have a lot of time to review mentorship applications.

122. After OOI took over responsibility for the economic stream, several OOI staff attended business review committee meetings and participated in reviews of mentorship applications.

123. *Application review process* – Until the contractual relationship ended, the committee members received applications from Cornwallis and reviewed these files individually prior to meeting to discuss the files. The two provincial employees who were originally members of the business review committee informed us that defining a middle management position was a significant challenge, further complicated by the lack of larger companies applying for the program. One of the review committee members indicated his definition of middle management had to change to fit the quality of applicants. The review committee did not meet with applicants, and were not provided with formal written criteria against which to assess applicants. Both members we spoke with indicated the criteria were flexible in order to fit changing circumstances as the NSNP evolved and as it became apparent that the program was not attracting the types of mentor companies OED had hoped it would.

124. Although assessment criteria were poorly documented, staff involved with the program indicated prospective mentor companies were assessed against criteria as follows:

- Private companies only, no publicly traded companies (removed as of September 1, 2006)
- No not-for-profit or government entities
- Minimum of five employees
- Offer a middle management position for at least six months

- Maximum of one nominee per business
- Minimum of one year between nominees for a business.

Once OOI was responsible for the program they further defined and clarified these criteria.

125. Mentor companies were required to provide supporting documentation with their applications to document their fulfillment of the criteria. These included financial statements for three years, a letter from the applicant's banker, an executive summary outlining the business as well as the role the nominee was to fill, and a mentoring plan for the nominee.

OFFICE OF IMMIGRATION: ECONOMIC STREAM OF THE NOVA SCOTIA NOMINEE PROGRAM

126. In September 2006, when OOI was managing the economic stream of the Nova Scotia Nominee Program, the mentor criteria were expanded to include further evidence of financial viability and further details of the mentoring component proposed by the company. The restriction on public companies was also removed.

127. We are concerned that other significant documentation was not required such as company and corporate owner credit checks and tax returns from the applicant. The original two provincial members on the review committee indicated that financial viability was a key part of their review process. However, they relied on a letter from a banker rather than a credit check, and financial statements that were seldom audited and occasionally prepared by the applicant. Additionally, the business review committee relied on the information provided in the application and never met with the applicant to discuss the position available or the mentoring plan for the nominee prior to the mentor company's approval to participate.

128. Our testing revealed numerous issues beyond our overall conclusion that 70% of the applications did not have sufficient support for the decision reached. These included files with no financial statements provided, lack of support for the number of employees listed, total salary expenses which suggested the number of employees was less than the minimum five required and, most significantly, clear evidence that the position was not at a middle management level. 14 of the 16 approved applications we reviewed lacked an adequate mentoring plan.

129. We identified one instance in which an application was conditionally approved because the mentor had already arranged a match with a nominee. When the nominee changed his mind, the application was rejected. We believe pre-arranged matches should not have affected the business review committee's decision to approve or reject a mentor company. If a company was eligible to provide an appropriate mentorship to a nominee it should have been approved; if not it should have been rejected.

Other Observations

130. We made a number of additional observations during our audit which we believe are significant. These observations are discussed in the following paragraphs.

131. *Review of external auditor files* – Three financial statement audits were completed on the trust account. The first covered the period from December 9, 2002 to December 31, 2003 and the audit opinion was unqualified. The second covered the period from December 9, 2002 to December 31, 2004, which includes the time frame covered by the first audited statement. The audit report for this period was qualified because Cornwallis had removed interest from the trust account. The auditors were not able to conclude whether this interest belonged to Cornwallis since the contract between the Province and Cornwallis does not address disposition of interest on the trust account. After a request by the Office of Immigration, Cornwallis subsequently returned the interest to the trust account. An audit was also completed for the year ended December 31, 2005. The audit opinion for this period was unqualified.

132. We reviewed the external auditor's working paper files for the three financial statement audits and noted no significant matters which require reporting.

133. Cornwallis prepared the financial statements in accordance with its agreement with the Province, rather than in compliance with generally accepted accounting principles (GAAP). Where possible, financial statements should be prepared in accordance with GAAP. Although statements are sometimes prepared for a specific purpose, such as illustrating compliance with a contractual arrangement, in this instance the Province's contract with Cornwallis lacked many of the requirements we would expect to find in government contracts with a private sector service provider. In light of these deficiencies, the usefulness of such financial statements to the Province is questionable.

134. *Review of Internal Audit files* – OOI asked the Department of Finance's Internal Audit and Risk Management Centre (IARMC) to complete an audit of Cornwallis' records related to its contract with the Province. Cornwallis transferred funds from the trust account to Cornwallis' corporate account and informed provincial staff that international immigration consultants were subsequently paid from that corporate account. In completing their work, IARMC staff were denied access to detailed support for payments to international consultants. IARMC's report, dated June 3, 2006, concluded that nominee funds were complete, accurate, valid and traceable, but noted it was not provided access to Cornwallis' current account records. Without those records, it was not possible for the auditors to determine amounts paid to agents or if the payments were appropriate.

135. During our examination of the economic stream of the Nova Scotia Nominee Program, Cornwallis showed our Office payments from their corporate account to various international immigration consultants. Further testing related to those payments is required. We will conduct this work and report the results in Phase Two of our audit.

Concluding Remarks

136. Notwithstanding the problems we have noted with respect to access to information, we wish to acknowledge the professionalism, courtesy and cooperation we have received from staff at the Office of Immigration and the Department of Economic Development during the course of this audit.

137. While we will continue our examination of certain aspects of the economic stream of the Nova Scotia Nominee Program in the second phase of our audit, it is clear at this stage that the program had significant deficiencies. The program was designed and delivered without clear attainable objectives. Even though some improvements were made after the Office of Immigration assumed responsibility for the economic stream, nevertheless the program was inadequately implemented and managed. It did not substantially achieve its goals.

Recommendation

We recommend that, prior to any further application of this program, and in order to ensure other immigration programs benefit from lessons which may be learned, a comprehensive review be conducted to evaluate the economic stream and measures be taken to correct the known program deficiencies.

Response: Office of Immigration and Department of Economic Development

The Province of Nova Scotia appreciates the opportunity to respond to the 2008 Auditor General's report on the Economic Stream of the Nova Scotia Nominee Program.

The Province agrees that the pilot program's Economic Stream, which was the focus of the Auditor General's review, did not operate as intended. It was because of growing concerns about the stream that the Province stopped accepting applications for it in July 2006 and introduced the Residency Refund Option in October 2007.

It is worth noting that at the time the nominee program was developed, government's number one priority was to successfully balance the provincial budget. Consequently, the program had to be a self-supporting one, without aid of tax dollars. As a result, a decision was made to work with a private-sector company to manage key elements of it.

As has been stated by the Minister of Immigration and senior staff to media and in appearances before the Standing Committee on Public Accounts, the contract between the Province and a private sector company was not tendered as specified in an Executive Cabinet directive. Though unintentional, not following a directive of the Executive Council was inappropriate.

The world of immigration is complex and while the approach taken was done so with the best of intentions, we have learned much about immigration since the program's inception. In fact, the Office of Immigration was established in 2005 in response to the Province's recognition that more resources were needed to effectively manage the nominee program and to enable Nova Scotia to meet its broader immigration goals as outlined in the then new immigration strategy.

The contract with the private sector company ended on June 30, 2006. The Province did not renew it and assumed full operational responsibility for the program on July 1, 2006. Subsequently, the Province introduced in excess of 25 measures to improve the Economic Stream's Business Mentorship component. These measures ranged from improving financial monitoring mechanisms and controls to introducing policies aimed at clarifying business mentorship eligibility and increasing accountability. Hence, we do not agree with blanket statements in the report that claim the program was poorly managed. In 2005, the Province put in place the resources needed to establish a dedicated immigration office that enabled staff to identify, document and address issues. This reality is reflected elsewhere in the report when it states that "OOI made continual efforts to improve the controls over the program and the trust account."

RESPONSE: OFFICE OF IMMIGRATION AND DEPARTMENT OF ECONOMIC DEVELOPMENT

Given the potential impact of the Auditor General's report on the program's remaining streams and the province's ability to meet its immigration goals, it is imperative that the reader understands the Province's position regarding the disclosure of documents.

The Office of Immigration has provided the Auditor General's Office with more than 20,000 records related to the Nova Scotia Nominee Program, specifically, the Economic Stream. The documents withheld represent approximately 6 per cent of the total records. They were withheld because they contained information that would reveal Cabinet deliberations or are protected by solicitor-client privilege.

We categorically disagree with the Auditor General's insistence that the Province has no authority upon which to withhold these documents.

The decision to withhold Cabinet documentation or portions thereof was a corporate one based on long-standing parliamentary traditions in protecting the confidentiality of Cabinet deliberations. The Province's practice of providing the Auditor General's Office with access to Cabinet Minutes goes beyond what is required. It is not the responsibility of the Auditor General to pass an opinion on the options faced by Cabinet. Rather, it is the Auditor General's responsibility to review and make recommendations on the proper implementation and execution of Cabinet's decisions.

On the matter of releasing solicitor-client documentation, the province takes the position that the Auditor General's power to compel the production of documents is not absolute and is subject to the Province's right to protect solicitor-client privileged information. In this case, the disclosure of solicitor-client communications to the Auditor General may compromise the lawsuit involving this matter currently before the courts.

Ultimately, the success of the Nova Scotia Nominee Program will be based on the number of new immigrants who choose to make this province their home. According to Citizenship and Immigration Canada, since 2003, immigration numbers in our province have almost doubled. In 2006 and again in 2007, the province welcomed more than 2,500 immigrants annually. This represents a 71 per cent increase since the nominee program's implementation in 2003. Citizenship and Immigration Canada credits the program for much of this increase.

These newcomers are helping to address the labour market needs of our companies, grow our economy, and add diversity to our communities.

Of course keeping newcomers here is as important as attracting them. Based on 2006 Census data, Atlantic Metropolis reports that Nova Scotia's immigration retention rate has climbed to 63 per cent from 37 per cent for the previous Census period.

From this vantage point and coupled with the program and policy changes we have made and will continue to make with the benefit of this report, Nova Scotia is on track for meeting our immigration goals.

While the Auditor General's review is based on and for a stream that, for all intent and purpose, has been discontinued, we accept his recommendation and are pleased to note that we believe our efforts in this area over the past two years are in compliance with it.

Nova Scotia Auditor General's Office